

*United States Court of Appeals
for the Second Circuit*

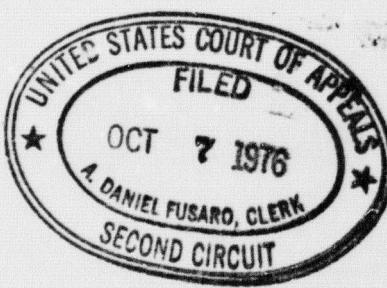


BRIEF FOR
APPELLEE

76-7299

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF FOR APPELLEE
STATES MARINE-ISTHMIAN AGENCY, INC.



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In The
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MISS MAE M. SMITH
(a/k/a MISS MARY M. SMITH),

Appellant,

-against-

FREDERICK V. BEHRENDS, FBI AGENT,
OSCAR G. RUBIN, ESQ., MRS DELIA
CRAVEN SMITH, et al.,

Appellees.

No. 76-7299

BRIEF FOR APPELLEE
STATES MARINE-ISTHMIAN AGENCY, INC.

APPEAL FROM ORDER AND JUDGMENT OF
THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NEW YORK.

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Marine-Isthmian Agency, Inc.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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MISS MAE M. SMITH,
(a/k/a MISS MARY M. SMITH), :
Appellant, : Docket No. 76-7299
-against- :
FREDERICK V. BEHREND, FBI AGENT,:
OSCAR G. RUBIN, ESQ., MRS. DELIA
CRAVEN SMITH, et al., :
Appellees. :
- - - - - x

Statement of the Case

The Appellant, acting pro se, alleges in her Complaint in general terms wrongful acts by the various defendants, but does not specify when, where and in what manner any act was done or words spoken which was in any-way harmful to the Appellant. The Defendant-Appellee, States Marine-Isthmian Agency, Inc. (herein "States Marine"), filed a general denial. The District Court, on March 4, 1976, dismissed the Appellant's Complaint with leave to replead. An Amended Complaint was filed and again States Marine filed an answer which denied all of the allegations of the Complaint and also pleaded the statute of limitations. Thereafter, States Marine and a number of other defendants noticed motions to dismiss, all of which were

heard together. The Appellant appeared personally on the return day of the motions and was given a full opportunity to be heard. The District Court granted the motions to dismiss on the ground that the Complaint violates Federal Rules of Civil Procedure 8(e)(1), and a judgment dismissing the case as to all defendants was entered on June 2, 1976.

Appellant filed her Notice of Appeal on June 11, 1976. Neither the Notice of Appeal nor the Civil Appeal Pre-Argument statement dated June 11, 1976 recite any basis for the appeal or any intelligible issues which the Appellant proposes to raise on her appeal.

ARGUMENT

I.

THE COMPLAINT VIOLATES FRCP RULE 8(e)(1)

Despite the fact that FRCP Rule 8(e)(1) is very broad and liberal in its requirements, despite the fact that numerous courts in the Federal system have held that special consideration should be given to complaints prepared by a plaintiff acting pro se, and despite the fact that the District Court after dismissing the Complaint which was initially filed permitted the plaintiff sixty days within which to file an amended complaint, it is apparent from the most cursory glance that the amended

complaint does not satisfy the requirement that each averment "shall be simple, concise and direct." Notwithstanding the obvious fact that the Complaint contains nothing but rambling, conclusory material which would be scandalous if submitted by a lawyer, the Plaintiff had ample opportunity at a hearing on motions to dismiss her Complaint to orally explain and make clear to the Court and to the Defendants the precise grievances she believes she has -- she did not avail herself of that opportunity.

There are many circumlocutions in the Complaint and recitations of alleged statements by various persons, but none of them are sufficiently identified to enable the Defendants to determine what they are called upon to defend.

II.

THE COMPLAINT FAILS TO SET FORTH GROUNDS UPON WHICH RELIEF CAN BE GRANTED.

Even if it could be said that the Complaint is sufficiently intelligible to enable the Defendants to respond, there is nothing in the Complaint which appears to support any claim for damages or injunctive relief against the Defendant-Appellee States Marine.

At page "Eighteen" the Complaint asserts that Plaintiff did not expect to work ". . . an average of 60 hours a week WITHOUT pay for overtime. . ." -- but fails to assert that there was any agreement to pay overtime or that in fact she worked overtime. With respect to the Plaintiff's work habits the form of words recited, far from slander, seem to be laudatory.

There is no allegation that Ragnor B. Hanson was acting within the scope of his employment in passing on to others "DEPRAVED, PSYCHOTIC LIES" (page Nineteen of the Complaint) about the Plaintiff, and in any event there is no specification of the nature of the "LIES."

III.

ANY CAUSE OF ACTION SET FORTH IN THE COMPLAINT IS TIME BARRED

Assuming for the sake of argument that a cause of action has been set forth in the Complaint, it is clear on the face of the Complaint that since the Plaintiff voluntarily left the employ of Defendant-Appellee, States Marine, in 1961 that no action will lie under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §255 (by her own statement she was a supervisory employee and not subject to the act in any event); and any contractual claim relating to the Plaintiff's employment

is barred by the New York State six-year statute of limitations, Civil Practice Law and Rules, §213.

Assuming again that any cause of action in slander or defamation has been pleaded, the only references to any specific dates are "from July to September 1965" (Complaint page "Twenty"), and therefore any action thereon would be barred by the New York one-year statute of limitations, CPLR §215.

CONCLUSION

While the Plaintiff-Appellant emerges from her written documents as a person who harbors fixed beliefs that she has been harmed by the named Defendants, and has, without doubt, suffered from such beliefs and probably has also suffered from her apparent inability to convince others that her grievances could support any action for legal redress, we respectfully suggest to the Court that she has been given ample opportunity to present her case, and should not be permitted to drag the enormous caravan of Defendants through any further proceedings.

Specifically, it is apparent on the face of the pleadings that any possible cause of action which Plaintiff-Appellant ever had against Defendant-Appellee, States Marine, is now time barred, and, therefore, as against it the judgment of the District Court should be affirmed.

Respectfully submitted,

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AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

SUSAN M. PASTOR, being duly sworn, deposes and says: Deponent is not a party to the action, is over 18 years of age and resides at 62 East 87th Street, New York, New York.

On October 5, 1976, deponent served the attached brief of Appellee, States Marine-Isthmian Agency, Inc., upon the parties and attorneys set forth in the annexed list, by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York, at said parties' and attorneys' last known addresses.



Susan M. Pastor

Sworn to before me this
5th day of October, 1976.



Notary Public

NOTARY PUBLIC
State of New York
Commission Expires March

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